

2-8-2016

# Willson v. State of Idaho, Transportation Dept. Appellant's Reply Brief Dckt. 43401

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IN THE SUPREME COURT OF THE STATE OF IDAHO

SHELBY GENE WILLSON	)	Supreme Court Docket No. 43401
	)	
Appellant,	)	
	)	APPELLANT'S REPLY BRIEF
	)	
IDAHO TRANSPORTATION	)	
DEPARTMENT,	)	
	)	
Defendant-Respondent	)	

APPELLANT'S REPLY BRIEF

\*\*\*\*\*

Appeal from the District Court of the Second Judicial District of the State of Idaho,  
in and for the County of Nez Perce (Case No. CV14-2370)

\*\*\*\*\*

THE HONORABLE JAY GASKILL

District Judge

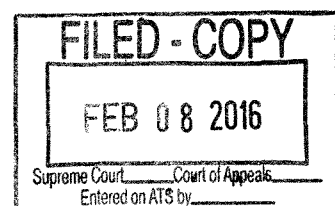
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Attorney for Respondent



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## TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES .....	I
SUMMARY .....	1
ARGUMENT .....	2
The Hearing Officer Erred by Finding That the Arresting Officers Had Legal Cause to Believe Mr. Wilson Was Operating a Motor Vehicle While under the Influence Since Any Information Used to Form Such a Belief Was Obtained in Violation of Mr. Willson's Constitutional Rights.. ..	2
CONCLUSION .....	6
CERTIFICATE OF MAILING .....	7

## TABLE OF CASES AND AUTHORITIES

### CASES:

<i>State v. Gutierrez</i> , 137 Idaho 647, 651, 51 P.3d 461, 465 (Ct. Ap 2002) .....	4
<i>United States v. Cortez</i> , 449 U.S. 411, 417-18, 101 S.Ct 690, 66 L.Ed.2d 621 (1981) .....	4

### STATUTES:

Idaho Code Section 18-8002A(7) .....	4
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## SUMMARY

The license suspension should be vacated since information used to support the arresting officer's belief that Mr. Willson was driving under the influence was unlawfully obtained in violation of Mr. Willson's constitutional right against being subjected to unreasonable seizures. In this case, the officer originally contacted Mr. Willson based upon third party claims that he was possibly suicidal. Mr. Willson assured the officer that he was fine and the officer admits that he is not a danger to himself. Nevertheless, the detention continued. The arresting officer acknowledges to the cover officer that he did not have reasonable belief that Mr. Willson was under the influence. Nevertheless, the detention continues. The two officers agree to try and get Mr. Willson to lie about something so as to create probable cause for an arrest. The plan failed and, yet, the detention continued. Only then, the officers subject Mr. Willson to field sobriety tests which the arresting officer relies upon for his belief that Mr. Willson was under the influence.

A fundamental premise of an officer having "legal cause" to believe that someone is under the influence is that the evidence giving rise to that belief is lawfully obtained. In the case at bar, the evidence relied upon by the officer to form his belief that Mr. Willson was DUI was obtained illegally and, therefore, the officer did not have the requisite "legal cause" to believe that Mr. Willson was violating Idaho's DUI laws. The hearing officer's findings to the contrary are erroneous such that the license suspension should be reversed.

The facts of this case are gleaned from the officer's testimony at the ALS hearing as well as

from a video recording of the stop and detention. References to the video are to the time stamp on the video as it is being played.

### **ARGUMENT**

**The Hearing Officer Erred by Finding that the Arresting Officers had Legal Cause to Believe Mr. Willson was Operating a Motor Vehicle while under the Influence since any Information Used to Form Such a Belief was Obtained in Violation of Mr. Willson's Constitutional Rights.**

Mr. Willson's constitutional rights under the Fourth Amendment of the U.S. Constitution and Article 1, Section 17 of Idaho's Constitution were violated while two law enforcement officers illegally detained him while trying create a justification for an arrest. For approximately 16 minutes, the officers detained Mr. Willson prior to having him submit to field sobriety tests. (See Video) Initially, the detention was based a community caretaking function arising from some ambiguous third party claim that Mr. Willson was possibly suicidal. The seizure continues despite Mr. Willson's repeated assurances that he was not suicidal and after Officer Dupea admits that Mr. Willson was "not one bit" a danger to himself<sup>1</sup>. (Video 7:51 - 7:55). With the elimination of any justification for continued contact with Mr. Willson, the two officers then, literally, conspire to conjure up a reason to detain and arrest Mr. Willson. (Tr. P. 13, Ls. 12-17) (Video 9:20 - 9:48).

Corporal Florence suggests that their options are to arrest Willson for being a danger to

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<sup>1</sup> Officer Dupea makes initial contact at 1:24 on the video by ordering Mr. Willson to open his door and step out. Mr. Willson assures the officer he is not suicidal on multiple occasions. (Video 2:15 - 2:20; 3:21 - 3:50) The two officers move away from Mr. Willson to talk but direct Mr. Willson that he cannot leave the tailgate that he was sitting on when Willson asked to do so. (Video at 7:25 - 7:52). During their discussions of the situation, Corporal Florence asks Dupea if there is really a concern about Mr. Willson's safety. The exchange is as follows:

7:50 – [Florence] "Is he a legitimate danger to himself?"

7:55 – [Dupea] "The way he is acting now, not one bit."

himself and commit him or they can “get him by the DUI way.” (Tr. P. 12, Ls. 22-25.) Dupea had already determined that Willson was not a danger to himself which eliminated the mental commitment option and left only “the DUI way” to provide an excuse to arrest Mr. Willson. Officer Dupea, however, also admitted that he did not have a reasonable suspicion that Willson was under the influence and informed Corporal Florence that despite being able to smell “a little bit” of alcohol on Willson (Video 7:56 - 8:00) he did not observe any other indicators of being under the influence. (Tr. P. 13, Ls. 5-11). Undeterred by the lack of legal justification for any detention, Corporal Florence concocts a game plan to ask Mr. Willson a series of questions with the ultimate goal of catching him in a lie to justify arresting him. (Tr. P.13, Ls. 12-17)(Video 9:30 - 9:48)

In furtherance of the new game plan, Officer Dupea re-establishes contact with Mr. Willson and starts asking him questions. Corroborating that the officers lacked any reasonable suspicion that Mr. Willson being under the influence is the fact that continued questioning of Mr. Willson was not related to any DUI investigation, but, instead, covered topics such as (1) where he had been that evening, (2) where he got his heating oil; (3) what was the content of text messages he had sent that evening; and (4) if he had any siblings. (See video at 10:00 - 16:00). The charade is exposed when the officers inquire about the content of Mr. Willson’s text messages but then decline an invitation by Mr. Willson to look at his cell phone to view his text messages. (Video 10:30 - 10:44). Declining to see the text messages further establishes that the officers had no real interest in that line of questioning or anything related to the community caretaking.

It is not until the officers exhaust their unsuccessful efforts to get Mr. Willson to lie to them that Officer Dupea then subjects Mr. Willson to field sobriety tests (See video at 16:15). Since Dupea had previously claimed that he did not have any reasonable suspicion of Mr. Willson being under the influence, any belief that Mr. Willson was operating a motor vehicle in violation of Idaho's DUI laws would have been gained through the field sobriety tests. Any such belief, however, does not arise to the level of "legal cause" since the field sobriety tests were conducted in violation of Mr. Willson's constitutional rights against unreasonable seizures as the officers unlawfully extended the duration of the detention and had no particularized and objective suspicion that criminal activity was afoot. *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 66 L.Ed.2d 621 (1981); *State v. Gutierrez*, 137 Idaho 647, 651, 51 P.3d 461, 465 (Ct. App. 2002).

The State argues that Administrative License Suspension analysis must be completely divorced from constitutional review and that the existence of constitutional violations are to be ignored as they do not fit within the list of available challenges the hearing officer considers per I.C. §18-8002A(7). The State's argument, however, lacks merit and improperly suggests that the Idaho legislature could somehow override constitutional protections against unreasonable seizures and sequester the consequences of the constitutional violations to the criminal case. The State's position is not well founded.

A review of the ALS framework finds, as expected, that the constitutional protections are inexorably intertwined in the listed reasons for vacating an administrative license suspension. In



creating the ALS framework, the legislature linked the officer's belief that the driver is under the influence with the term "legal cause." Thus, evidence obtained to fulfill this requirement must be in accordance with constitutional protections just like the "legal cause" for the stop must satisfy the constitutional protections against unlawful seizures. To hold otherwise would render the term "legal cause" meaningless and would open the door to constitutional abuses.

If the Court accepted the State's analysis, then an officer's unlawful actions would go unchecked. If an officer observed someone traveling 1 mph over the speed limit they would overcome the hurdle of having legal cause for the stop. Then, with that hurdle having been cleared the officer would have free reign to detain the person for whoever long the officer desires and to impose all manners of physical tests and questioning to piece together illegally obtained information to create a "belief" that the driver is under the influence. Clearly, such a scenario is neither permitted by the Constitution of the United States or the State of Idaho nor is such a scenario contemplated by the Idaho legislature. It is the constitutional requirement for the officer to have legal cause from the stop through the evidentiary test that provides citizens from abusive conduct.

Since officers must have "legal cause" to believe that the driver is under the influence, that belief must not run afoul of the driver's constitutional rights against unlawful seizures. The hearing officer's finding that legal cause existed is erroneous. By ignoring the officers constitutional violations, the hearing officer's findings, conclusions and decision violate the constitution as it results in a license suspension that is grounded upon a violation of Mr. Willson's rights within the

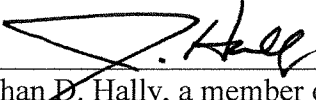
Fourth Amendment to the U.S. Constitution and Article 1, Section 17 of the Constitution of the State of Idaho.

**CONCLUSION**

Based upon the above, Mr. Willson respectfully requests this Court set aside the agency's decision.

DATED this 4th day of February, 2016.

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By:   
Jonathan D. Hally, a member of the firm  
Attorneys for Petitioner-Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of February, 2016, I caused to be served two copies of the foregoing document by the method indicated below, and addressed to the following:

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- ☒ U.S. Mail, postage prepaid
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By: \_\_\_\_\_

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